

UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS

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ROSENBAUM CAPITAL LLC, on Behalf	)	
of Itself and All Others Similarly Situated,	)	
	)	
Plaintiff,	)	
	)	C.A. No. 05-11165 WGY
v.	)	
	)	
BOSTON COMMUNICATIONS GROUP, INC.,	)	
KAREN A. WALKER and EDWARD H.	)	
SNOWDEN,	)	
	)	
Defendants.	)	

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**MOTION FOR CLARIFICATION OF BRIEFING  
SCHEDULE ON DEFENDANTS' MOTION TO DISMISS**

The Plaintiff, Rosenbaum Capital, LLC, by and through its undersigned counsel of record, respectfully moves this Court for: 1) clarification of the briefing schedule on the defendants' motion to dismiss in view of two apparently conflicting orders; and 2) reinstatement of the briefing schedule set forth in this Court's September 6 Order to the extent that said order has been vacated or superceded. In support of this Motion, Plaintiff would respectfully show the following.

1. On September 6, 2005, the Court entered an order, adopting a stipulation of the parties for a schedule as follows: Plaintiffs' amended complaint to be filed by October 13, 2005; Defendants' response to complaint to be filed by December 2, 2005; opposition to any motion to dismiss to be filed by January 13, 2006; and defendants' reply in support of motion to dismiss to be filed by February 10, 2006 (the "September 6 Order").<sup>1</sup>

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<sup>1</sup> A copy of the September 6 Order is annexed hereto as Exhibit A.

2. The parties have thus far adhered to the September 6 Order, in that the first two events, the filing of the Amended Complaint and the response to the complaint, were timely filed according to the Order's provisions. The Defendants' response to the complaint was in the form of a motion to dismiss.
3. Subsequently, on December 8, 2005, the parties received, via the ECF electronic notification system, a Notice of Hearing from the Court, setting a hearing on the motion to dismiss for February 14, 2006, at the Boston University Law School Auditorium.<sup>2</sup> The Notice of Hearing also stated that the opposition to the motion to dismiss would be due by December 16, 2005, and the reply, if any, would be due by December 28, 2005, dates which are inconsistent with the Court's previous September 6 Order.
4. Prior to December 8, 2005, Plaintiff received no notice or order of any kind from the Court stating, or indicating in any way, that the September 6 Order had been vacated or superceded.
5. Prior to December 8, 2005, the parties hereto acted in all respects as if the September 6 Order governed the scheduling in this action, including compliance with those of its deadlines that have come up thus far.
6. The September 6 Order and the Notice of Hearing provide conflicting schedules for briefing on Defendants' motion to dismiss. Moreover, while defendants have received the full benefit from the original schedule by having over seven weeks to prepare their motion to dismiss after filing the amended complaint, Plaintiff has unexpectedly lost four of the six weeks it had agreed to with defendants and obtained by Court Order, and

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<sup>2</sup> A copy of the Notice of Hearing is annexed hereto as Exhibit B.

became apprised of that loss only six business days before the new due date.

7. The scheduled hearing date for the motion to dismiss, February 14, 2006, would not conflict with the briefing schedule set by the September 6 Order, as briefing under that Order would be concluded by February 10, 2006. Accordingly, Plaintiff does not believe that the hearing would need to be rescheduled if this Motion is granted, and Plaintiff is not now requesting a postponement.
8. Given the apparent conflict between the Court's two orders, Plaintiff asserts that clarification from the Court as to the operative briefing schedule would be appropriate.
9. Plaintiff also asserts that the September 6 Order, to the extent that it has been vacated or superceded, should be reinstated by the Court, as the parties have been adhering to and operating under the schedule set forth in that Order.

WHEREFORE, Plaintiff respectfully requests that this Court: 1) provide clarification as to the operative briefing schedule on the Defendants' motion to dismiss; and 2) reinstate its September 6 Order and the schedule set forth therein, to the extent that said Order has been vacated or superceded.

CERTIFICATION PURSUANT TO LOCAL RULE 7.1(A)(2)

Undersigned counsel have conferred with Defendants' counsel in a good faith effort to resolve or narrow the issues raised by this Motion, and are authorized to say that Defendants take no position on this Motion.

Respectfully submitted,

/s/ David Pastor

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**Plaintiffs' Counsel**

# Exhibit A

**UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS**

ROSENBAUM CAPITAL LLC, On Behalf  
of Itself and All Others Similarly Situated,

Plaintiff,

v.

BOSTON COMMUNICATIONS GROUP, INC.,  
KAREN A. WALKER and EDWARD Y.  
SNOWDEN,

Defendants.

No. CIV. A. 05-11165-WGY

**STIPULATION FOR PROPOSED SCHEDULE**

Pursuant to ¶ 7 of the Court's July 20, 2005 Order Regarding Complaint and Responsive Pleading, the parties have conferred and hereby stipulate to, and jointly propose, the following schedule for the above-captioned case:

Plaintiffs' Amended Complaint: To be filed on or before October 13, 2005;

Defendants' Response to  
Amended Complaint: To be filed on or before December 2, 2005;

Plaintiffs' Brief in Opposition to any  
Motion to Dismiss Filed: To be filed on or before January 13, 2006;

Defendants' Reply Brief: To be filed on or before February 10, 2006.

The parties respectfully request that the Court approve this stipulation.

Respectfully Submitted,

ROSENBAUM CAPITAL LLC, On Behalf of  
Itself and All Others Similarly Situated

By their attorneys,

/s/ David Pastor

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Dated: September 1, 2005

SO ORDERED:

Dated: Sept 6, 2005

William G. Young  
William G. Young  
United States District Court Judge

# Exhibit B



**David Pastor**

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**From:** ECFnotice@mad.uscourts.gov  
**Sent:** Thursday, December 08, 2005 12:02 PM  
**To:** CourtCopy@mad.uscourts.gov  
**Subject:** Activity in Case 1:05-cv-11165-WGY Rosenbaum Capital LLC v. Boston Communications Group, Inc. et al "Notice of Hearing on Motion"

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**United States District Court****District of Massachusetts**

## Notice of Electronic Filing

The following transaction was received from Smith, Bonnie entered on 12/8/2005 at 12:02 PM EST and filed on 12/8/2005

**Case Name:** Rosenbaum Capital LLC v. Boston Communications Group, Inc. et al  
**Case Number:** 1:05-cv-11165  
**Filer:**  
**Document Number:**

**Docket Text:**

NOTICE of Hearing on Motion [22] MOTION to Dismiss *Amended Class Action Complaint*: Motion Hearing set for 2/14/2006 02:00 PM before Chief Judge William G. Young. The hearing will take place at: BOSTON UNIVERSITY LAW SCHOOL, Law School Auditorium, 765 Commonwealth Ave., Boston. Opposition to the motion is due by 12/16/05. Reply brief, if any is due by 12/28/05. cc/cl(Smith, Bonnie)

The following document(s) are associated with this transaction:

**1:05-cv-11165 Notice will be electronically mailed to:**

David Pastor dpastor@gilmanpastor.com, rdambrosio@gilmanpastor.com

Clark W. Petschek clark.petschek@wilmerhale.com

**1:05-cv-11165 Notice will not be electronically mailed to:**

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12/8/2005

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